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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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STATEMENT OF  
J. DEXTER PEACH, DIRECTOR  
ENERGY AND MINERALS DIVISION  
U.S. GENERAL ACCOUNTING OFFICE  
ON THE  
[ADEQUACY OF THE DEPARTMENT OF ENERGY'S  
ENFORCEMENT OF CRUDE OIL RESELLER PRICE CONTROLS]  
BEFORE THE JOINT HEARING OF THE  
SUBCOMMITTEE ON ENERGY AND POWER  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
AND THE  
SUBCOMMITTEE ON CRIME  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES

*HSE 00203*

*HSE 00204*

Mr. Chairman and members of the Subcommittees:

On August 25, 1978, Senator John A. Durkin of the Senate  
Committee on Energy and Natural Resources *SEN 00300* asked GAO to review  
selected issues concerning the Department of Energy's handling  
*AGC 00912*  
of crude oil reseller cases involving suspected criminal  
activity. Our report is the result of the Senator's request.

Copies of our report have been made available to the  
Subcommittees, so I will limit my remarks to a summary of our  
findings and recommendations. But first, I would like to  
place this review in proper perspective.

PRIOR GAO REPORTS

GAO studies of the adequacy of enforcement of oil pricing  
regulations go back to the beginning of the price control  
program under the Federal Energy Administration (FEA). We have  
*AGC 00915*  
reported on FEA's enforcement program on a number of occasions.



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The overall findings of our previous reports have shown a consistent pattern of problems plaguing the Government's efforts to effectively and adequately implement the oil price regulations.

Some of the problems we discussed in prior reports and testimonies included:

- the lack of adequate audit coverage,
- excessive concentration of audit effort in some areas at the expense of others,
- incomplete audits being performed,
- substantive issues relating to the adequacy of regulations remaining unresolved, and
- organizational disputes within the agency hindering audit work.

Many of these problems surfaced again in our recent review of the enforcement of regulations governing crude oil resellers.

*currently*  
~~Our report addresses~~ three primary issues, *include:*

- the adequacy of DOE procedures for handling criminal cases,
- the adequacy of audit coverage of crude oil resellers, and
- the effectiveness of DOE in resolving regulatory issues affecting reseller audits.

## THE HANDLING OF CRIMINAL CASES

DOE written procedures do not provide for participation by Justice in decisions affecting the scope of and approach to investigations to determine that violations are willful and subject to criminal penalties. These procedures require DOE investigators, in our opinion, to go further than necessary before referring cases to Justice.

These procedures are essentially the same as those followed earlier by FEA, whose preoccupation with establishing the willfulness of violations adversely affected its overall reseller audit program and contributed to delays in referrals to Justice. In this regard, our review of all nine crude oil reseller cases referred to Justice as of March 1979 showed lengthy delays between the time the agency had information indicating criminal activity and the time the cases were referred to Justice. In all but one of these cases the delays ranged from 1 to 3 years. In addition, FEA's expanded investigative role had diverted scarce staff resources away from the agency's primary responsibility of ensuring that crude oil resellers comply with price control regulations.

It was not possible for us to determine exactly when the investigations should have been terminated and the cases referred to Justice. However, it was apparent from our

detailed review of several case histories that FEA auditors and investigators pursued the determination of the willfulness of the violations well beyond the point at which the cases could have been referred to Justice. In some of these cases, violations took place in early 1974, and by early 1979 the Federal 5-year statute of limitations could begin to prevent prosecution of some violations.

We are concerned that because of the similarities between FEA's procedures and practices and DOE's procedures and plans, which place greater emphasis on investigations than audits, DOE, like FEA, will spend too much time and resources establishing the willfulness of a relatively few violations at the expense of adequate audit coverage of all crude oil resellers and more timely case referrals to Justice.

The Department of Energy has made organizational changes and, we are told, developed informal procedures to improve the referral of cases to the Department of Justice. The fact remains, however, that the Department's written procedures regarding referral of crude oil resellers have not changed; and the risks of these procedures producing the same adverse effects as FEA experienced are very real. Also, there is no assurance that the operating practices we are told are in place are in line with overall Departmental policy

and will continue regardless of personnel changes. Because no new crude oil reseller cases have been referred to the Department of Justice under this new system, we were not able to determine its effectiveness.

The Justice Department has also taken steps to promote closer coordination with DOE, such as the creation of an energy unit within the Fraud Section of the Criminal Division to receive referrals from DOE and to maintain liaison with all U.S. Attorneys handling DOE cases. We believe such actions are on target and provide an appropriate framework for closer coordination. But they still do not take the place of written procedures and they do not go far enough.

We are recommending that the Secretary of Energy enter into a memorandum of understanding with the Attorney General to establish written procedures for referring criminal cases to the Department of Justice which assure that the responsibilities of the two departments are clearly delineated. Among other things, the procedures should provide for timely and meaningful involvement by Justice in key decisions affecting the scope of, and approach to, criminal investigations.

We are also recommending that the Attorney General review opportunities to expand informal coordination channels with DOE to include regional level discussions of cases before formal referral.

THE ADEQUACY OF AUDIT  
COVERAGE

Since the price control program began in January 1974, both FEA and DOE had given low priority to crude oil reseller audits. At the close of the last fiscal year in September 1978, DOE told us it had identified 592 crude oil resellers but completed audits of only 11 and had 43 audits in progress or planned.

This total of 54 represents nationwide coverage over a 5-year period of about 9 percent of all crude oil resellers.

A review of the public record leaves no doubt that DOE and FEA were fully apprised of the shortcomings of their audit activities by GAO and others and that they agreed corrective actions were needed and would be taken. However, until recently, no such actions were taken.

DOE's attention to crude oil reseller audits has been continually changing and evolving over the past several months which we believe was at least partly in response to increased visibility and attention created by various congressional reviews (including GAO's), court action, and media coverage.

Over the next 2 years DOE plans to significantly increase its reseller audit activity before phasing down that activity in fiscal year 1980. DOE's top three audit priorities are as follows;

- highest priority--provide continuing full support to investigations of suspected willful violations;
- second priority--complete crude reseller civil audits;
- third priority--bring previously opened civil cases to resolution;

The fiscal year 1980 budget figures show that support to special investigations, which are, in effect, criminal investigations, by the end of fiscal year 1979 will account for 50 percent of the crude oil resellers staff positions. By the end of fiscal year 1980, DOE projects that 38 percent of its crude oil reseller staff will be used to support special investigations.

While we have no basis to question the capability of DOE auditors assigned to crude oil reseller audits, we are concerned that DOE may be spreading its resources too thin and starting audits without the ability to complete them. Evidence of this exists in the minimal resources devoted to recent audit starts. Also, many of the audits completed to date appear to have been limited to evaluating compliance with requirements for certifying oil as either old oil or new oil. The focus on certification does not give adequate consideration to another significant part of DOE's compliance and enforcement program--pricing audits designed to ensure that oil is sold at the proper price. We believe that an

effective audit should include an evaluation of compliance with both certification and pricing regulations.

After completion of our field work, DOE provided us statistics indicating a surge in the number of open audits and recent starts. While time did not permit us to make a detailed review of the adequacy of the staffing of the audits, we did obtain DOE staffing information showing the time spent on each assignment.

We analyzed all 39 crude oil reseller audits DOE started during the first 6 months of fiscal year 1979 and found that DOE assigned the equivalent of one auditor on a part-time basis to 33 of the 39 audits. On only 6 of the 39 audits did we find that DOE had assigned at least the equivalent of one full time auditor to the assignment.

DOE officials said that several factors, such as unavailability of records, and legal actions, could in some cases, account for the low level of audit effort.

We are recommending that the Secretary of Energy:

--Review staff assignments for the ongoing audits to ensure that an adequate number of qualified auditors have been assigned to satisfactorily complete them in a timely manner.

--Provide the audit resources necessary to effectively carry out its workplan for fiscal years 1979-80, including pricing audits.

--Monitor the results of ongoing audits and increase the audit coverage if the results show a high incidence of violation.

#### UNRESOLVED REGULATORY ISSUES

Another major problem that impeded pricing audits in the past was the matter of unresolved issues. Until recently, DOE had been unable to effectively audit crude oil resellers for compliance with pricing regulations because key issues involving the interpretation and application of such regulations had not been resolved despite repeated criticisms by GAO and others over the last several years.

DOE and FEA have had a history of failure to promptly resolve regulatory issues so that an adequate compliance and enforcement effort could be conducted. Clarification of existing regulations had received a low priority because, according to Office of General Counsel officials, their staff had been overburdened with requirements for developing new regulations.

Two major issues were identified by DOE regional offices as having impeded pricing audits, namely

--the computation of the legal selling price of crude oil where multiple inventories make up the base period cost from which allowable cost increases are measured, and

--the determination of the legal selling price of crude oil for resellers with no base period cost because they were not in business during the May 1973 base period.

Without going into a detailed explanation of these very complex issues, I should point out that these issues were not new. The first issue was raised initially in August 1975 and the second issue in May 1976. Furthermore, such issues were highlighted as needing early resolution in reports issued by us and the DOE Inspector General. These issues have now apparently been resolved to DOE's satisfaction. Neither issue however, was resolved in a timely manner, and we question whether DOE effectively handled the first issue. Furthermore, it was not until December 1978, during our review, that DOE provided written guidance on how to handle the second issue.

The prolonged period required to resolve these issues had adverse effects in that DOE had to

- suspend pricing audits and limit its audit activities to reviews for compliance with certification requirements,
- suspend assessments of possible overcharges against crude oil resellers, and
- delay completion of audits which might ultimately jeopardize the prosecution of some violations because of the 5-year statute of limitations.

We are recommending that DOE develop a specific plan to ensure that all regulatory issues are promptly resolved. Such a plan should pinpoint responsibility and accountability for timely consideration and resolution of issues raised, including the establishment of timeframes for taking action and designation of officials responsible for resolving the issues.

Before concluding my remarks, I would like to point out that we received lengthy comments from DOE on a draft of our report which strongly disagreed with our findings and recommendations. We believe this disagreement, particularly with regard to the handling of criminal cases, was based primarily on a misunderstanding of our concerns and the actions we are advocating. DOE strongly maintained that recent improvements in its coordination with Justice have completely resolved this issue. However, as pointed out earlier in my statement, the new procedures have not been formalized and no cases have been investigated and referred using them. Therefore, their effectiveness remains to be seen. We plan a follow-up review to test the effectiveness of these operating procedures.

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Mr. Chairman, this concludes my prepared statement. We will be happy to answer any questions you or members of the Subcommittees may have.